



**Rules and Ancillary Document Review Checklist**  
(This form must be filled out electronically.)

All responses should be in **bold** format.

Document Reviewed (include title): **WAC 458-20-173 (Rule 173) Installing, Cleaning, Repairing or Otherwise Altering or Improving Personal Property of Consumers.**

Date last adopted: **July 1, 1970**

Reviewer: **Margaret J. Partlow**

Date review completed: **September 26, 2000**

Is this document being reviewed at this time because of a taxpayer or business association request? (If "YES", provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request). **YES** ☐ **NO** **X**☒

Type an "x" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

**1. Explain the goal(s) and purpose(s) of the document:**

**The purpose of the document is to explain the application of the business and occupation (B&O) and retail sales taxes that apply when persons engage in the business of installing, cleaning, decorating beautifying, repairing or otherwise altering or improving tangible personal property of consumers located both inside and outside the state.**

**2. Need:**

<b>YES</b>	<b>NO</b>	
<b>x</b>		Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
	<b>x</b>	Is the document obsolete to a degree that the information it provides is of so little value that the document warrants repeal or revision?
	<b>x</b>	Have the laws changed so that the document should be revised or repealed? (If the response is "yes" that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
<b>x</b>		Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.)

Please explain.



**3. Related ancillary documents, court decisions, BTA decisions, and WTDs: Complete** Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an ancillary document. Excise Tax Advisories (ETAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered ancillary documents.

(a)

YES	NO	
<b>x</b>		Are there any ancillary documents that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
<b>x</b>		Are there any ancillary documents that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	<b>x</b>	Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that provide information that should be incorporated into this rule?
<b>x</b>		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
		Should this ancillary document be incorporated into a rule?
		Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that affects the information now provided in this document?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is “yes” to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

**See also the ancillary document review checklists for the following:**

- **ETA 421.04.103 Sales tax: Labor performed outside of state - advises taxpayers who provide repair work that for labor performed outside Washington to be exempt from retail sales tax, the out-of-state repair must be an integral part of the repair contract and within the contemplation of the buyer-owner. Having the ETA incorporated into Rule 173 would assist taxpayers by having all repair issues addressed in one rule. ETA 421 was reviewed on August 29, 2000, and the reviewer’s recommendation also was to incorporate it into Rule 173.**
- **ETA 128.08.173 Dismantling of equipment as retail sales – discusses the taxability of dismantling equipment that comes off ships, when the dismantling is a part of the process of moving, packing, crating, and loading the equipment on railroad cars for further shipment. This document should be repealed.**



- **ETA 208.04.173 Sale of abrasives and masking tape for use in the performance of an automobile painting contract** – discusses the taxability of materials consumed in the repair process. This document deals with essentially the same issue as 11 WTD 327 (1992), and should be incorporated into the rule to assist taxpayers by having all repair issues addressed in one document.
- **ETA 213.04.173 Distinction between “manufacturing” and “altering” activities** – discusses the taxability of such activities as carving epitaphs on tombstones and cutting keys from blanks, distinguishing in which circumstances the activity constitutes manufacturing as opposed to altering or repairing. This document should be incorporated into the rule to provide clarity and convenience for taxpayers.
- **ETA 215.04.173 Repair work on goods damaged in transit as ordered by the shipper and the carrier** – discusses the taxability of repairs to articles damaged in transit when the repaired item is for resale versus the taxability of repair work performed by a carrier which was not reselling either the repair work or the commodity upon which the repair work was performed. This document should be incorporated into the rule to assist taxpayers by having all repair issues discussed in one document.
- **ETA 322.08.113/173 Materials used in welding processes** – discusses the taxability of sales of oxygen, acetylene, welding rod, or flux used in welding processes. This document should be incorporated into the rule to provide clarification for taxpayers, and to assist taxpayers by having all such information contained in one document so it is more easily located.

There are some WTDs which provide clarification and interpretation which may be helpful to incorporate into the rule (perhaps through examples):

- **3 WTD 59 (1957)** – Charges for cleaning beer taps, lines, and heads are retail sales. This type of activity is not a service ordinarily performed by a commercial janitorial business. A “seller” of such services is liable for uncollected retail sales tax.
- **6 WTD 267 (1988)** – Repairs to tangible personal property for a consumer is taxable as a retail sale. Even though the repairs are performed by the owner of the property, they are done for the lessee, or consumer, of the property.
- **7 WTD 79 (1988)** – Charges made for repairs of property performed entirely out-of-state, when all parties knew that the repairs were to be done outside of Washington, are not subject to Washington’s taxing authority.
- **12 WTD 157 (1993)** – Where out-of-state businesses ship property into Washington for repair, an in-state repair facility is not allowed an interstate deduction in respect to repair parts installed into the property during the repairing process and subsequently delivered to the customer at a point outside the state of Washington.
- **14 WTD 199 (1999)** – Use tax is due on the value of new parts installed into equipment repaired out-of-state and returned to Washington. (Consistent with ETA 421, above.)

**4. Clarity and Effectiveness:**

YES	NO	
x		Is the document written and organized in a clear and concise manner?
	x	Are citations to other rules, laws, or other authority accurate? (If no, identify



		the incorrect citation below and provide the correct citation.)
<b>x</b>		Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities, help ensure that the tax law and/or exemptions are consistently applied?)
	<b>x</b>	Do changes in industry practices warrant repealing or revising this document?
	<b>x</b>	Do any administrative changes within the Department warrant repealing or revising this document?

Please explain.

**The rule as written is organized in a clear and concise manner. However, as noted above, it does not contain all information necessary to reduce the number of rules/documents necessary for taxpayers to research to determine their tax-reporting responsibilities. Information now provided in the Department's August 4, 1994 Special Notice entitled "Business and occupation tax liability of out-of-state repair businesses" should also be incorporated into Rule 173.**

**The rule does provide two incorrect citations to other rules:**

- The reference to "WAC 458-20-193, Part A" should be changed simply to read "WAC 458-20-193"; and
- The reference to "WAC 458-20-107" should be changed to "WAC 458-20-257."

**Also, the rule would be enhanced by being rewritten in the format currently utilized by the Code Reviser's Office and the Department, particularly with respect to the addition of examples incorporating interpretation via WTDs.**

#### 5. Intent and Statutory Authority:

YES	NO	
<b>x</b>		Does the Department have sufficient authority <b>to adopt</b> this document? (Cite the statutory authority in the explanation below.)
<b>x</b>		Is the document consistent with the legislative intent of the statutes that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed <b>to implement</b> ?) If "no", identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
	<b>x</b>	Is there a need to recommend legislative changes to the statutes being implemented by this document?

Please explain.

**RCW 82.32.300 authorizes and directs the Department of Revenue to make and publish rules to administer chapters 82.04 through 82.27 RCW.**

**6. Coordination:** Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
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	<b>x</b>	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?
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Please explain.

**The department of revenue has the exclusive authority to administer the B&O, retail sales, and use taxes in this area.**

**7. Cost:** When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
	<b>x</b>	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain.

**This is an interpretive rule that imposes no new or additional burdens on taxpayers that are not imposed by law.**

**8. Fairness:** When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
<b>x</b>		Does the document result in equitable treatment of those required to comply with it?
	<b>x</b>	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
	<b>x</b>	Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain.

**9. LISTING OF DOCUMENTS REVIEWED:** (Use “bullets” with any lists, and include documents discussed above. Citations to statutes, ancillary documents, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)

Statute(s) Implemented: **The following statutes are implemented to the extent they apply to installing, cleaning, repairing or otherwise altering or improving personal property of consumers:**

- **RCW 82.04.040 (Defines “sale”)**
- **RCW 82.04.050 (Defines “sale at retail” and “retail sale”)**
- **RCW 82.04.220 (Business and occupation tax imposed)**
- **RCW 82.04.250 (Retailing B&O)**
- **RCW 82.08.020 (Retail sales tax imposed)**



- **RCW 82.08.0265 (Exemptions for sales to nonresidents of tangible personal property which becomes a component of property of the nonresident by installing, repairing, etc.)**

Ancillary Documents (i.e., ETAs, PTBs, and ADs):

- **ETA 421.04.103 Labor performed outside of state.**
- **ETA 128.08.173 Dismantling of equipment as retail sales.**
- **ETA 208.04.173 Sale of abrasives and masking tape for use in the performance of an automobile painting contract.**
- **ETA 213.04.173 Distinction between “manufacturing” and “altering” activities.**
- **ETA 215.04.173 Repair work on goods damaged in transit as ordered by the shipper and the carrier.**
- **ETA 322.08.113/173 Materials used in welding processes.**

Court Decisions: N/A

Board of Tax Appeals Decisions (BTAs): N/A

Administrative Decisions (e.g., WTDs):

- **3 WTD 1 (1987) – There is a sales tax exemption for sales of component parts sold to nonresidents for use outside this state, and on repair work done for nonresidents where the seller delivers the property to a purchaser outside this state. The exemption was not available to the taxpayer because the property sold was not for use outside this state and the repaired property was not delivered outside this state.**
- **3 WTD 59 (1987) – Charges for cleaning beer taps, lines, and heads are retail sales. This type of activity is not a service ordinarily performed by a commercial janitorial business. A “seller” of such services is liable for uncollected retail sales tax, even if he did not know of the obligation to collect the tax.**
- **4 WTD 393 (1987) – A sale of a maintenance contract calling for periodic inspection, servicing, and repair of tangible personal property is a retail sale.**
- **6 WTD 33 (1988) – Where engineering services are readily separable from the repair of portable machinery, the two activities will be judged independently for purposes of the B&O and retail sales tax. Here, the basis for such separation is found in two different contracts.**
- **6 WTD 267 (1988) – Repair to tangible personal property for a consumer is taxable as a retail sale. Even though the repairs are performed by the owner of the property, they are done for the lessee, or consumer, of the property.**
- **7 WTD 79 (1988) – Charges made for repairs of property performed entirely out of state, when all parties knew that the repairs were to be done outside of Washington, are not subject to Washington’s taxing authority. Accord, ETA 421.04.103.**
- **11 WTD 327(1992) – Materials consumed in the repair process which were purchased by the taxpayer performing repairs were subject to deferred sales tax even though they were separately charged to customers.**
- **12 WTD 157 (1993) – Where out-of-state businesses ship property into Washington for repair, an in-state repair facility is not allowed an interstate deduction in respect**



to repair parts installed into the property during the repairing process and subsequently delivered to the customer at a point outside of Washington.

- **12 WTD 609 (1993) – Cleaning equipment or structures is a retail activity unless at a designated hazardous waste site. Removing hazardous wastes from bare land or water is taxable as a service. When a contract involves a combination of these activities, the receipts are taxed under the classification of the predominant activity.**
- **13 WTD 18 (1993) – A Washington taxpayer is taxable as a wholesaler when it is hired and paid by a foreign manufacturer to assist in installing galleys in customers' aircraft.**
- **14 WTD 199 (1995) – Use tax is due on the value of new parts installed into equipment repaired out-of-state and returned to Washington.**

Attorney General's Opinions (AGOs): N/A

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed): N/A

#### 10. Review Recommendation:

\_\_\_\_\_ **X Amend**

\_\_\_\_\_ Repeal

\_\_\_\_\_ Leave as is

\_\_\_\_\_ Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.)

\_\_\_\_\_ Incorporate ancillary document into a new or existing rule. (Subject of this review must be an ancillary document and not a rule.)

**Explanation of recommendation:** (If recommending an amendment of an existing rule, provide only a brief summary of the changes you've identified/recommended earlier in this review document.) **The rule should be amended to incorporate:**

- **ETAs 421, 208, 213, 215, and 322;**
- **The Special Notice dated August 4, 1994 (entitled "Business and occupation tax liability of out-of-state repair businesses");**
- **12 WTD 157, which discusses in-state repairs for out-of-state businesses; and**
- **To conform to current format standards and include illustrative examples, in order to provide clearer and more easily accessible guidance to taxpayers regarding their tax reporting responsibilities.**

11. Manager action: Date: \_\_\_\_\_



\_\_\_\_\_ Reviewed recommendation

\_\_\_\_\_ Accepted recommendation

\_\_\_\_\_ Returned for further action

Comments: